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June 3, 1998

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, Northwest  
Washington, DC 20554

Re: In the Matter of The National Exchange  
Carrier Association, Inc. Petition for  
Waiver of Section 36.2(a)(3) of the  
Commission's Rules

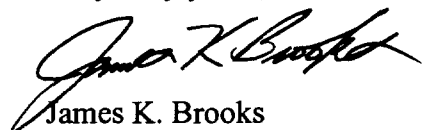
CC Docket No. 80-286

Dear Ms Roman Salas:

Enclosed herewith for filing with the Commission are the original and six copies of Johnson Stone & Pagano, P.S. comments in the above captioned matter.

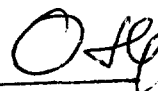
Please acknowledge receipt hereof by affixing a notation on the duplicate copy of this letter furnished herewith for such purposes and remitting same to bearer.

Very truly yours,

  
James K. Brooks

JB:jb

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	COMMENTS OF JOHNSON STONE &
The National Exchange	)	PAGANO, P.S.
Carrier Association, Inc.	)	
	)	
Petition for Waiver of Section	)	
36.2(a)(3) of the Commission's	)	
Rules	)	

## I. Introduction

Given the current rules contained in the Federal Communications Commission (FCC) Part 36 - Jurisdictional Separations Procedures, the accuracy of traffic measurement is critical to properly allocate the Rate Base elements to the appropriate jurisdiction. The traffic factors, with the exception of the gross allocator, are developed based on usage measurement and are expressed in percentages. These factors distribute substantially all investments to Interstate, Intrastate and local jurisdictions. Assigning costs on these jurisdictional distributions gives justification to cost causation.

The FCC recognizes the validity in the cost causation concept in its Part 36 procedures, Section 36.1(c), when it refers to "the second step is the apportionment of the cost of the plant in each category among the operations by direct assignment where possible, and all remaining costs are assigned by the application of appropriate use factors".

## II. Are Internet Service Providers Similar to Interexchange Carriers?

Prior to Feature Group D Access, which allows subscribers to access the Interexchange Carrier (IXC) of their choice by 1+ (or when required an access code of 10XXX) dialing, Interexchange Carriers (excluding ATT and ALASCOM) could provide service through Feature Group A (FGA) Access. FGA provides access to the IXC by the IXC's subscriber via a seven digit local telephone number. The IXC's subscriber would dial the seven digit local telephone number, gain connection to their IXC (generally confirmed by an audible tone) and then dial the number that they wanted to communicate with. At the Local Exchange Carriers (LEC) end office where the associated seven digit local telephone number is resident, the IXC has several options to connect to the world. The most obvious is to complete the connection on its own facilities. Generally this is not a viable option since FGA carriers do not have the vast network of an ATT.

One viable option is to pay another IXC with facilities connected to that office for a high capacity circuit linked to its own facilities. This high capacity circuit acts as an aggregator for transport and can handle numerous voice grade circuits depending on the capacity ordered. The high capacity circuit is also classified as special access and, other than the IXC designating it as Interstate by virtue of the ten percent rule, usage is not measured by the LEC. However, the portion from the IXC's subscriber to the LEC end office utilizes the LEC's switch in the process of making this call. Switching investment within Part 36 utilizes a usage based traffic factor, Dial Equipment Minutes (DEM), for jurisdictional allocation. Absent the measurement of actual usage by minutes, the switching investment would not properly reflect its actual usage in the DEM since the switch is only registering local minutes; from the subscriber to the high capacity circuit. If the actual jurisdictional usage can not be determined by the LEC, the IXC would supply this information.

The Internet Service Provider (ISP) sets up for business in a similar fashion as an IXC with FGA access. The ISP generally orders from the LEC a block of local lines for its Internet customers to access its Internet server and a high capacity circuit to another Internet hub. The difference being that the ISP's usage is not measurable nor do the ISP's provide any minutes of use or percentage of Interstate usage.

A simple example that the Internet is used for interstate purposes is within the FCC itself. The FCC's web site is accessed by people throughout the United States, if not the world, but it resides in a server probably in Washington, D.C. If a person wants to see what is on the FCC's agenda or download information, they must query that web site.

### **III. Conclusion**

Absent any rulings by the FCC on the matter of whether the Internet should be considered as access, we support the National Exchange Carrier Association, Inc. petition for waiver of Section 36.2(a)(3) of the Commission's Rules and stongly urge the FCC to grant this waiver.